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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 RICHARD LEE JOHNSEN,

9 Plaintiff,

10 v.

11 HENRY TAMBE,

12 Defendant.

Case No. 19-141-TSZ

ORDER

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14 This is a 42 U.S.C. § 1983 prisoner civil rights action. This matter comes before the
15 Court upon Defendant's response to the Honorable Thomas S. Zilly's Minute Order dated
16 October 16, 2019. (Dkt. # 43 (Jonathan Ballard Declaration ("Ballard Decl.")).) Judge Zilly
17 vacated the pending Report and Recommendation in this matter due solely to concerns that
18 Plaintiff had not been properly served with actual notice of Defendant's pending motion for
19 summary judgment given his release date from the Skagit County Jail. (Dkt. # 42 (Judge Zilly's
20 10/16/19 Minute Order).) Judge Zilly gave Defendant an opportunity to assure the Court that
21 Plaintiff actually received such notice, and ordered that "[i]f defendant can verify that plaintiff
22 was actually served with the Rand notice and the pending motion for summary judgment, he
23 shall file a declaration within seven (7) days of this Minute Order." (*Id.* at 1-2.) Judge Zilly

1 directed that “[i]f not, defendant shall take steps to locate plaintiff and arrange for service of the
2 Rand notice, as well as his motion, file a revised declaration of service, and renote his motion for
3 an appropriate date.” (*Id.* at 2)

4 Defendant responded to Judge Zilly’s Minute Order by filing a declaration from defense
5 counsel that does not comply with Judge Zilly’s directives. (Ballard Decl.) Defense counsel
6 confirmed that he attempted to serve Defendant’s motion for summary judgment and the *Rand*
7 notice on Plaintiff at the Skagit County Jail, but those documents were returned to him by the
8 U.S. Postal Service marked “Return to Sender” because Plaintiff was no longer in custody. (*Id.* at
9 ¶¶ 2-5.) Thus, although Defendant filed a declaration in response to Judge Zilly’s Minute Order,
10 he provided evidence confirming Judge Zilly’s suspicions that Plaintiff was not actually served
11 with those documents and failed to acknowledge the second directive in Judge Zilly’s Minute
12 Order at all. Rather, defense counsel simply asserts that he had already “appropriately served
13 [Plaintiff] at his address of record on file with the Court.” (*Id.* at ¶ 7.) Defense counsel also
14 pointed out that Plaintiff had failed to notify him, or the Court, of his change of address, which
15 suggests that defense counsel is not taking any steps to locate the Plaintiff. (*Id.* at ¶¶ 8-9.)

16 Defendant is directed to comply with Judge Zilly’s Minute Order by no later than
17 **Wednesday, November 6, 2019**. Specifically, Defendant shall “take steps to locate plaintiff and
18 arrange for service of the *Rand* notice, as well as his motion, file a revised declaration of service,
19 and renote his motion for an appropriate date.” (Judge Zilly’s 10/16/19 Minute Order.) **Counsel**
20 **is advised that as a general matter, the Court expects counsel to disclose the fact that**
21 **attempts to serve documents, and particularly dispositive motions, were unsuccessful.**

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1 The Clerk is directed to send copies of this order to the parties and to the Honorable
2 Thomas S. Zilly.

3 Dated this 24th day of October, 2019.

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6 MICHELLE L. PETERSON
7 United States Magistrate Judge
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